

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:22-cv-293-JRG
)	
SAMSUNG ELECTRONICS CO, LTD;)	JURY TRIAL DEMANDED
SAMSUNG ELECTRONICS AMERICA,)	(Lead Case)
INC.; SAMSUNG SEMICONDUCTOR)	
INC.,)	
)	
Defendants.)	

NETLIST, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:22-cv-294-JRG
)	
MICRON TECHNOLOGY, INC.;)	JURY TRIAL DEMANDED
MICRON SEMICONDUCTOR)	
PRODUCTS, INC.; MICRON)	
TECHNOLOGY TEXAS LLC,)	
)	
Defendants.)	

**PLAINTIFF NETLIST, INC.'S RESPONSE TO SAMSUNG'S REPONSES O
THE COURT'S ORDER GIVING NOTICE OF INTENTION TO APPOINT
A SPECIAL MASTER (DKT. 247)**

Netlist does not object to the appointment of a Special Master to address the pending discovery motions, nor does Samsung. However, Samsung has filed a “response” (Dkt. 247) which is in fact a disguised sur-sur-reply brief on Samsung’s pending stay motion. In addition to being procedurally improper, Samsung’s response is inaccurate. First, Samsung neglects to mention that Netlist has moved to stay the Central District of California action, *Netlist Inc. v. Samsung Electronics Co., Ltd.*, Case No. 8:20-cv-00993-MCS-ADS, Dkt. No. 341 (C.D. Cal. November 30, 2023), and the Central District has set that motion to stay for hearing on the same day (February 5, 2024) as the motion for summary judgment that Samsung references in its response. Second, the Central District has not set a trial date (or any dates for that matter, other than the one hearing date), C.D. Cal. Dkt. 345, nor did Samsung even ask for one, C.D. Cal. Dkt. 343 at 23. Thus, regardless of what happens at the February 5, 2024 hearing, it is very likely that this case will be tried well before the Central District action. Finally, Samsung’s reliance on the first-to-file rule and its citation to *W. Gulf Maritime Ass’n v. ILA Deep Sea Loc.* 24, 751 F.2d 721, 728-29 (5th Cir. 1985) remain inapt for all of the reasons demonstrated in Netlist’s opposition to Samsung’s stay motion. Dkt. 196 at 14-15, Dkt. 215 at 2-3. In particular, this case and the Central District action have different scopes, with this case being the only one that can resolve the parties’ entire dispute. Moreover, the first-to-file rule is meant to protect a plaintiff’s choice of forum. Dkt. 196 at 14-15. Here, that is not an issue because Netlist filed both this case and the Central District Action. So Samsung’s argument is both procedurally improper and meritless.

Dated: December 3, 2023

Respectfully submitted,

/s/ Jason Sheasby

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CERTIFICATE OF SERVICE

I hereby certify that, on December 3, 2023, a copy of the foregoing was served to all counsel of record via this Court's CM/ECF system.

/s/ Yanan Zhao
Yanan Zhao